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Moral Basis of Legal Education As It Relates to Human Rights

Robert S. Pasley

THE MORAL BASIS OF LEGAL EDUCATION AS IT RELATES TO HUMAN RIGHTS

*Robert S. Pasley**

Introduction

In addressing myself to the topic, "The Moral Basis of Legal Education As It Relates To Human Rights," I am reminded of the story told of one of Harvard's famous professors in the days when the study of law there was truly a "Spartan Education," in "Bull" Warren's memorable phrase.[1] One day in class a student was heard to murmur that he did not agree with the outcome of a case then under discussion. "And why not, pray?" "Because, sir," said the luckless student, "this result doesn't seem just to me." "Just!" thundered the professor, "You're in the wrong building, boy. Go across the street to the Theological Seminary if you want to hear them talk about justice. Here we study *law*."

Professor Robert Pasley

Even if this story is apocryphal, it is of a piece with the disdain then felt by legal educators toward anything outside the confines of the law, as they conceived it. For example, Langdell, in speaking of the rule that an offer is accepted when the acceptance is deposited in the mail, stated that:

> It has been claimed that the purposes of substantial justice, and the interests of contracting parties as understood by themselves, will be best served by holding that the contract is complete the moment the letter of acceptance is mailed; and cases have been put to show that the contrary view would produce not only unjust but absurd results. The true answer to this argument is, that it is irrelevant . . . .[2]

In fairness, it must be pointed out that Langdell then proceeded to assume the relevance of the argument and to demonstrate that it could be used just as convincingly to support the opposite result, a conclusion which may or may not have been justified. But it is clear that Langdell's real position was that a rule is a rule, and that's that.

Few today would accept such a narrow conception of the law as a self-contained system of more or less arbitrary rules. But although we talk bravely of the social and economic factors which shape the law, and of the civic and political goals which it seeks to achieve, we still use, by and large, the same teaching methods as those which were followed when these more narrow attitudes prevailed. I refer primarily to the case method of instruction, but to other features as well: the Socratic method, and the organization and structure of the orthodox curriculum.

* Professor of Law, Cornell University.

1 See C. WARREN, SPARTAN EDUCATION (1942).

2 C. LANGDELL, A SUMMARY OF THE LAW OF CONTRACTS § 20-21 (2d ed. 1880).

I do not propose that we scrap the case system and all that goes with it. It has too many solid achievements to its credit to warrant any cheap denigration. But after all it is almost a hundred years old and on this Centennial Celebration of your distinguished law school some reappraisal might be in order. Again, a new look at the standard curriculum might not be amiss.

In recent years, a great deal has been published on this general subject, and I can do no more this morning than add another voice to those which have already been raised. But beyond this, I am going to try to relate my remarks to the moral basis of legal education and to the theme of these conferences, human rights. I propose to do so under these headings:

(a) The purpose and function of legal education;
(b) Some deficiencies in the traditional approach;
(c) Some possible avenues of improvement;
(d) Training for professional responsibility;
(e) The contribution which legal education can make toward the better enforcement of human rights.

I. The Purpose and Function of Legal Education

It is a truism to say that the purpose of legal education is to qualify students for the practice of law. This should not be understood in any narrow sense but rather, in the words of Andrew D. White, spoken in 1887 in anticipation of the establishment of my own school, Cornell:

> Our aim should be to keep its instruction strong, its standards high and so to send out, not swarms of hastily prepared pettifoggers, but a fair number of well-trained, large-minded, morally based *lawyers* in the best sense, who, as they gain experience, may be classed as *jurists* and become a blessing to the country, at the bar, on the bench, and in various public bodies.[3]

I think it is significant that White, a layman, should have stressed the moral basis of legal education at the very time when the established schools were thinking more in terms of exclusively professional training. Not that there is anything wrong with professionalism. As a matter of fact, the first and most basic requirement of any legal education is that it turn out lawyers who are professionally qualified. For legal education to be moral, in any true sense of the word, it must be solid, sound, and effective. Morality is not something to be sought outside of, or superimposed on, a professional education. Much less is it something that can be pursued independently of the reality to which it relates. Rather, the first requirement of morality in legal education, as in anything else, is that the education process itself be sound and solid, capable of achieving its primary goal. So the first question I think we should turn to is whether legal education, as now generally pursued, is in fact achieving this goal. A remarkable number of recent observers have stated their opinion that it is not.[4]

3 White, *The Law School*, 59 CORNELL U. ANNOUNCEMENTS 9 (No. 23, 1968).
4 *See generally A Symposium in Honor of Hardy C. Dillard: Legal Education*, 54 VA. L.

II. Some Deficiencies in the Traditional Approach to Legal Education

A. The Case System

Probably the greatest advantage of the case system is that it substitutes for the mere presentation of a body of rules, to be mastered, organized, and perhaps memorized, something of the stuff of life, the raw materials out of which these rules emerge and on which they operate. As such, it cannot help but catch and hold the interest of the student, at least in the first year. Its formlessness and apparent lack of organization, so baffling to the beginner, are the very things that force the student to organize his own materials, his own notes, his own thoughts, in short to educate himself. Another advantage of the case system is that it teaches, or should teach, the student to read and handle decided cases, a skill which every lawyer must have, even in these days of widespread statutory codification, and despite the declining force of the doctrine of precedent.

Undoubtedly there are other advantages of the case system, but I should like to go on now to some of its disadvantages. First of all, the almost exclusive preoccupation with the opinions of appellate courts means that the student is experiencing the facts at second or third remove, and he really gets little or no experience with the handling of facts in their brute reality, or as first presented in the trial court.

Secondly, preoccupation with appellate cases causes undue emphasis on legal doctrine (even if that doctrine is not neatly prepackaged), as opposed to functional considerations. Neglected too are familiarity with trial court records, administrative proceedings, and legislative materials.

Thirdly, under the case system the student receives inadequate training in the everyday practical skills of the lawyer: counseling clients, negotiating agreements, drafting pleadings, wills, contracts, and other legal instruments, interviewing witnesses, trying cases, writing briefs, and arguing appeals.

Fourthly, and perhaps most serious of all, after the first year boredom and apathy set in, the "second-year slump" occurs, the student loses interest in reading cases, and tends to regard each successive casebook course as "more of the same."

B. The Socratic Method

Waiving for the moment the question whether this was really the method Socrates used,[5] the time-honored dialogue between professor and student in analyzing an assigned case or in arguing a hypothetical situation is probably the

REV. 583 (1968); *Report of the Committee on Curriculum*, 1968 ASS'N AM. L. SCHOOLS PROC., pt. 1, § II, at 7-38; *Roundtable on Curricular Reform*, 20 J. LEGAL ED. 387 (1968); *Symposium: The Teaching Process in Legal Education*, 37 U. CIN. L. REV. 1 (1968); Freeman, *Legal Education: Some Farther-Out Proposals*, 17 J. LEGAL ED. 272 (1965); Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL ED. 1 (1964); Haskell, *Some Thoughts About Our Law Schools*, 56 GEO. L.J. 897 (1968); Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); Pasley, *The Position of the Law School in the University*, 16 CATHOLIC U.L. REV. 34 (1966); Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402 (1965).

5 *Cf.* Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. CIN. L. REV. 7, 27 (1968).

most characteristic feature of American legal education and the one which sets it off most from English and continental methods (and, for that matter, from typical undergraduate teaching). In the hands of a master, it is a delight to observe. The student being interrogated learns (if he learns at all) to be quick of mind, sharp of tongue, precise in reasoning. He soon finds out that he cannot "bull it through," that fallacious reasoning leads to disaster, that facile overgeneralizations are subject to prompt demolition. He learns too the joy of following an argument to its clear, logical conclusion, of testing his own mind against that of the instructor, of sharpening his intellect, of improving his reasoning power.

What then can possibly be wrong with it? Mainly this: it doesn't work with everyone. Passing for the moment the question whether all teachers are qualified to use it (manifestly, many are not; some do not even try), we must ask what its effect is on the rank and file of students.

I have heard some of the current crop of students complain of the "drill sergeant" tactics used by some devotees of the Socratic method. At first I was inclined to put this down to undue timidity or softness on their part. But a recent study by a psychiatrist, Dr. Andrew S. Watson, who is also a professor of law at the University of Michigan, indicates that there is substance to the complaint.[6] Dr. Watson believes that the Socratic method, while it may be effective with a minority of the students, by its very aggressiveness tends to be extremely stressful on the majority, arousing deep feelings of anxiety, and in some cases leading to withdrawal from school, failure, or even a complete breakdown.[7] If this finding is justified, it seems too high a price to pay. If in fact we are destroying some of our students, and discouraging others, what becomes of the *moral* basis of our legal education?

Another objection to the case system and the Socratic method, and one closer to the subject matter of this address, is that the emphasis on legal doctrine and the technique of legal argumentation tends to blind the student to the ethical implications of legal problems and their solutions. At the 1956 Conference on the Education of Lawyers for Their Professional Responsibilities, sponsored by the Association of American Law Schools, the view was widely shared that "the broad impact on problems of public responsibility of the legal profession, of movements in legal education since Langdell's institution of the case method in 1890, was a negative one."[8] This result was attributed by many to (1) the Socratic method, (2) the case system, and (3) the separation of law and morals.[9]

Without going into the vexed question of the relation between law and morals, which has been debated endlessly, suffice it to say that there is certainly a connection between the two and that no solution to a legal problem, no study of a field of law, can be considered adequate which does not give consideration to the ethical and moral questions involved. To give just a few examples:

6 Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968).

7 *Id.* at 119-22, 124-32. *Cf.* Comment, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201.

8 J. STONE, LEGAL EDUCATION AND PUBLIC RESPONSIBILITY 79 (1959).

9 *Id.* at 82-84.

Under what circumstances, if any, may criminal sanctions be imposed in the absence of mens rea? Is racial or religious discrimination ever permissible? Conversely, to what extent can the move toward black separatism be justified ethically or morally? Can a legal code be devised to govern modern medical miracles, such as heart transplants, without considering the moral questions of the meaning of life and death?

It would be an unfair exaggeration to say that such questions are ignored in law school teaching. But to the extent that they are subordinated or lost sight of in the pyrotechnics of the Socratic dialogue and the manipulation of legal doctrine under the case system, then our system of legal education *is* failing of its purpose of turning out "morally based lawyers in the best sense."[10]

C. The Curriculum

The standard law school curriculum has not changed its basic thrust since Professor Beale proposed an ideal first-year curriculum in 1902.[11] True there have been changes. Some courses have been dropped — Equity and Agency come to mind, and I am not sure that their loss has been altogether beneficial. Others have been consolidated: Sales and Negotiable Instruments are now commonly taught together under the rubric "Commercial Law," using the Uniform Commercial Code as the vehicle of instruction. This I think is to the good. Exotic new courses have proliferated: Land Use Planning, Computer Science and the Law, Government Contracts, to name but a few. They are all important and room must be found for them somehow. But basically, the emphasis is still on (1) substantive law, accounting for about two-thirds of the law school program, (2) procedure (including evidence), accounting for perhaps one-sixth, and (3) a few "cultural" courses like comparative law, international law, legal history, and jurisprudence accounting for the remainder.

I suppose my main grievance is not what this includes, but what it leaves out or underemphasizes. Elsewhere I have suggested that this curriculum is at one and the same time not sufficiently practical, nor yet sufficiently theoretical. I have already adverted to the failure of the case system to train the student in the practical skills of the lawyer. The standard curriculum fails equally, it seems to me, to give the student an adequate conception of the rule and function of the law in society, of its historical development, and of its philosophical implications. Professor Julius Stone has observed that it is the duty of lawyers "to preserve and advance the indispensable and enlightened cooperation in the maintenance of fundamental democratic processes and forms, on which free government depends."[12] I ask, how can they be expected to do this if their legal education gives them no conception of what the law is about, or indeed why such an institution as the law should exist at all?[13]

Before leaving this subject, I would like to say a few words about the tradi-

10 See text accompanying note 3 *supra*.
11 Rutter, *supra* note 5, at 19.
12 J. STONE, *supra* note 8, at 19.
13 *See* Pasley, *The Position of the Law School in the University*, 16 CATHOLIC U.L. REV. 34, 44 (1966).

tional first-year curriculum. With all the changes, all the subtractions and additions, this has tended to remain fairly constant. It usually consists of five solid blocks of so-called "fundamental" subjects: Contracts, Torts, Property, Criminal Law, and Procedure. But how fundamental are these subjects really? How much of what they cover is relevant to the lawyer's practice today? How much is relevant to the basic needs of society?

It has recently been suggested that the bulk of the first-year course in Contracts, centered as it is around the Restatement and Williston (offer and acceptance, consideration, conditions, and so on) does not really deal with the problems actually encountered by businessmen in their everyday dealings or regarded by them as important.[14] Moreover, with the advent of the Uniform Commercial Code, there remains only a limited area where these concepts can still operate in their common law form.

What of the course in Torts, with its emphasis on negligence law? If we go to an automobile accident compensation plan, as seems inevitable, ninety per cent of the area in which negligence is now significant will be swept away. In Property, how relevant today are estates in land, riparian rights, easements, and so on? In Criminal Law, has not the real focus of interest shifted from the substantive law of crimes to the area of criminal procedure and of due process for the accused, before, during and after trial?

Aside from the question of relevance, it seems to me that the major weakness of the first-year curriculum is that it tends to freeze the mind of the student into the belief that these are the basic branches of the law, to which all else is mere superstructure and recent addition. Inevitably, this colors his whole subsequent attitude toward his legal education, and even toward the law he encounters in practice. The overall effect is necessarily narrowing and stultifying.

III. Some Possible Avenues of Improvement

How can we make legal education a process which is more meaningful to the student, a better preparation for his subsequent practice, a broader introduction to the needs and problems of society?

Although I have no blueprints, I do have a few suggestions. I would not advocate abandonment of the case system, but rather less reliance on it, especially after the first year. It needs to be supplemented with more generous use of the problem method, of seminars, of trial moot court, of exercises in draftsmanship, in counseling, in negotiation, and the other arts of the practitioner. How may this be done, you ask, with our limited faculty and our even more limited resources of space and time? Frankly, I do not know, but I think it must be done.

Jerome Frank, in a persuasive article published over twenty years ago, advocated just this approach.[15] I think I can do no better than summarize some of his recommendations and ask you to consider how seriously they have been

14 Friedman & Macaulay, *Contract Law and Contract Teaching: Past, Present, and Future,* 1967 WIS. L. REV. 805.

15 Frank, *A Plea for Lawyer-Schools,* 56 YALE L.J. 1303 (1947).

taken by our law schools and to what extent they have been put into practice. He suggested first that a considerable number of law teachers be men with five to ten years' experience in practice, including trial experience.[16] This used to be the general rule in recruiting law teachers, but in recent years I have noted a tendency, which I regard as regrettable, to recruit young men just out of law school, or with a year or two of graduate work (which is usually more remote from actual practice than is undergraduate legal education).

Secondly, he recommended that the study of appellate opinions be supplemented with the reading and analysis of complete court records, from the filing of the first paper to the final disposition on appeal.[17]

Thirdly, he urged that law school studies be supplemented by frequent visits to the courts.[18]

Fourthly, he thought that every law school should have a legal clinic which, in addition to the customary furnishing of legal aid, would take on other work, including trials, for governmental agencies, legislative committees, and other public bodies.[19] Admittedly, a great deal has been done in this direction in recent years, with the expansion of legal aid clinics, the increased emphasis on defense of the indigent, the permission granted in some states (New York for example) for law students to appear in court, participation by law students in neighborhood law offices, and so on. The fact remains that only a portion of the student body participates in these activities, and they are generally considered less prestigious than the law review and sometimes even than moot court.

All this is on the practical side. But I would not neglect (nor would Jerome Frank) the theoretical. I think here that less emphasis should be given to the details of the substantive and procedural law of the moment (most of which will be bound to change very substantially during the student's professional career) and more to a study of those subjects which underlie the law and give it its meaning, thrust, and significance. I think that every law student should be required to pursue an integrated program covering such subjects as Jurisprudence, Legal History, Law and Society, Comparative Law, and International Law, and that such studies should occupy at least one-fifth of his law school program.[20] Only in this way can students be expected to understand the role and function of the law in society, its philosophic foundations and implications, its goals and purposes. In short, only in this way can they learn to understand the morality of the law and only in this way can legal education become truly moral.

What of the standard first-year curriculum? I would like to see it completely transformed so that the problems with which it dealt would be both more realistic and more idealistic. Could not the course in Contracts, for example, instead of manipulating a system of more or less artificial rules, try to show the student the real role of the exchange relationship in business? As Professor

16 *Id.* at 1313-15.
17 *Id.* at 1315.
18 *Id.* at 1315-16.
19 *Id.* at 1316-18.
20 *See* Pasley, *supra* note 13, at 45-46.

Malcolm Sharp has suggested,[21] could not this course, from the very outset, show the relationship between contract, agency, and the corporation, the interplay between the common law rules and the Uniform Commercial Code, the contrast between the old-fashioned bargain, freely arrived at at arm's length, and the modern contract of adhesion? Could not the course in Torts become a course in civil compensation, treating of workmen's compensation and other forms of social insurance, of fault versus non-fault liability, and of products liability, whether based on notions of negligence, warranty, or strict liability in tort?

Could not the course in Real Property emphasize the problems of land-use control, the renewal of our cities, the elimination of the ghetto, and the relationship of landlord and tenant in our urban slums?

Could not the course in Criminal Law become a course in criminal procedure, with a thorough study of the recent Supreme Court opinions on due process for the accused, police interrogation, the right to counsel, and so on? Perhaps in the same course consideration could be given to problems of penology, of the causes of crime, of rehabilitation of the offender, and so on.

Some introduction to civil procedure would still seem to be in order, and it need not differ substantially from the course now commonly given, except that in addition to reading cases, visits to the courts, preparation of records, and argument of motions would make the subject come to life. In addition, a course analyzing the role and processes of the courts, the legislatures, and administrative agencies in creating and applying the law might well be in order.

Finally, I think the first year is not too soon to begin the program I have suggested above of teaching the student something of the broader aspects of the law. While various courses could be suggested here, I think Jurisprudence and Legal History might better be reserved for the second or third year. An introductory course on Law and Society would seem more appropriate for the beginning student.

I have probably suggested more courses than could possibly fit into any first year program. This comes down to a matter of selection. Here I am trying only to make some broad suggestions for your consideration.

What of the Socratic method? I certainly would not advocate abandoning it, but it might well be tempered to remove the element of fear, the "drill sergeant" aspect of which students have complained. Dr. Watson, in the article I have already mentioned, points out that Socrates himself used to reward his students by praising them when they performed well.[22] An expression of appreciation for a good answer would at least offset the scorn too commonly heaped on the head of the luckless one whose answer is not up to par. Nor do I think the Socratic method should be used, as it sometimes is, for the purpose of confusing and befuddling the student, with the calm assurance that six months from now it will all become clear to him. In my opinion it is not necessarily a heinous offense to provide the student with some answers, to outline a complex problem for him, or to summarize the result of a line of cases.

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21 Sharp, *The Relevance of Contract Theory: A Symposium — Introduction,* 1967 WIS. L. REV. 803.

22 Watson, *supra* note 6, at 123-24.

IV. Training for Professional Responsibility

We should never forget that, in educating our students, we are preparing them to practice a profession. Dr. Watson points out that very little attention has been given in the literature to the concept of professionalism, fundamental though it is.[23] He finds little to improve on Mr. Justice Brandeis's description of the characteristics of a profession, which he paraphrases as follows:

1. It possesses a highly complex body of knowledge which may be gained only after a lengthy education.
2. Because of the complexity of that knowledge, it is largely incomprehensible and untestable to the laymen for whose assistance it will be utilized.
3. Because of this vulnerability of the client-patient, the professional owes his first duty to his subjects' best interests. The result is that all professions have a self-enforcing code of ethics.
4. Since the professional also derives his livelihood from his work, this automatically involves him in a conflict of interests. He must always subsume this interest to the best interests of his client.[24]

The most eloquent statement on professional responsibility which I have seen is that promulgated in 1958 by the Association of American Law Schools [AALS] Joint Conference on Professional Responsibility, under the co-chairmanship of Professor Lon Fuller for the AALS and John D. Randall for the American Bar Association [ABA]. The opening paragraph of this statement deserves quotation:

> A profession to be worthy of the name must inculcate in its members a strong sense of the special obligations that attach to their calling. One who undertakes the practice of a profession cannot rest content with the faithful discharge of duties assigned to him by others. His work must find its direction within a larger frame. All that he does must evidence a dedication, not merely to a specific assignment, but to the enduring ideals of his vocation. Only such a dedication will enable him to reconcile fidelity to those he serves with an equal fidelity to an office that must at all times rise above the involvements of immediate interest.[25]

The statement goes on to point out the three major services performed by the modern-day lawyer:

(a) In his role as advocate and counselor;
(b) As one who designs a framework that will give form and direction to collaborative effort;
(c) Services which run not to particular clients, but to the public as a whole.[26]

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23 *Id.* at 132.
24 *Id.* at 133. Brandeis delineated these in BUSINESS — A PROFESSION 2 (1914).
25 *Report of the Joint Conference on Professional Responsibility,* 1958 ASS'N AM. L. SCHOOLS PROC., pt. 3, at 187-203.
26 *Id.* at 188.

Probably it is the third of these that relates most closely to the subject matter of this conference. Here the statement emphasizes the lawyer's loyalty, not to persons, but to procedures and institutions, specifically his responsibility as a guardian of due process. It is his duty, and the duty of the organized bar, to make legal services available to all who need them. Moreover, the lawyer has an obligation to concern himself with the reform and improvement of the law.

The statement concludes by declaring:

> For understanding is not of itself enough. Understanding may enable the lawyer to see the goal toward which he should strive, but it will not furnish the motive power that will impel him toward it. For this the lawyer requires a sense of attachment to something larger than himself.
>
> For some this will be attainable only through religious faith. For others it may come from a feeling of identification with the legal profession and its great leaders of the past. Still others, looking to the future, may find it in the thought that they are applying their professional skills to help bring about a better life for all men.
>
> These are problems each lawyer must solve in his own way. But in solving them he will remember, with Whitehead, that moral education cannot be complete without the habitual vision of greatness. And he will recall the concluding words of a famous essay by Holmes:
>
> "Happiness, I am sure from having known many successful men, cannot be won simply by being counsel for great corporations and having an income of fifty thousand dollars. An intellect great enough to win the prize needs other food besides success. The remoter and more general aspects of the law are those which give it universal interest. It is through them that you not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law."[27]

As a statement of goals and purposes, this cannot be surpassed. But how do we train students to reach these high standards? I submit, only by providing them with a sound professional and cultural education, such as I have tried to outline above: one that will train them first, to be adequate, competent lawyers; second, to see the law as a whole, in its historical, social, and cultural context; and third, one that will inculcate in them a sense of duty and loyalty toward a cause other than themselves, the cause of justice, so far as humanly attainable, for all men everywhere. Specific courses, such as Jurisprudence, Law and Society, Legal Ethics, and the Legal Profession can help in contributing toward this goal. But nothing can take the place of a dedicated, hard-working faculty, who by their example and devotion to duty, their concern with the welfare of each individual student, and their own services to the causes of law reform, of defense of the indigent, of improvement of the legal process in all its aspects, can demonstrate to their students what the teaching and practice of a profession means in reality.[28]

It is encouraging to see that the Ford Foundation last year made a generous grant to the newly created Council on Legal Education for Professional Re-

27 *Id.* at 202.

28 *But see* Smith, *Is Education for Professional Responsibility Possible?*, 40 U. COLO. L. REV. (1968).

sponsibility [CLEPR], successor to the Council on Education in Professional Responsibility, which was a joint creation of the ABA, the AALS, and the National Legal Aid and Defender Association. With these funds CLEPR will make grants totalling approximately $950,000 per year to law schools interested in making clinical or field work in the administration of justice a regular part of their program.[29] (From 1959 to 1968, a similar but smaller program has previously been financed by Ford Foundation grants to the Council on Educational Responsibility and a predecessor organization, The Council on Legal Clinics.)

As the new and old Councils have stated in their 1968 Report to the AALS:

> Clinical experience should contribute to legal education by bringing law students and faculty directly into the life of the law in real roles. In doing so, the programs should reinforce and broaden the existing social concerns of certain law students and professors through direct confrontation with injustice and misery; at the least the experiences should implant in all participants a special sensitivity to the difference between justice and injustice which should serve a lawyer throughout the course of his life and professional career: an awareness that lawyers have a special responsibility for the better administration of justice for all citizens — not just their clients.[30]

V. Legal Education and Human Rights

How does all this bear on the central theme of these conferences, human rights? Simply this, that we cannot expect law students to advance the cause of human rights unless they are first awakened to their responsibility in this area. On the whole, I think the record of the American bar on human rights has been a good one, at least in recent years. But has the awakening come from their legal education or from elsewhere? I submit that traditional legal education has contributed only to a limited degree and that the main impetus has come from the pressures of society, of organized groups, of the bar associations, of the government. It is time I think for the law schools to play their full part. Fortunately, there are signs of change, on the part of individual law teachers, of contributors to legal periodicals, and most heartening of all, from the students themselves.

It is customary to equate the term "human rights" with the rights of minority groups, of the dwellers in the ghettoes and slums, of the accused criminal, in short, of all the disadvantaged and oppressed classes in our society. I have no quarrel with this use, but I would like to point out that, taken literally, the term "human rights" refers to the rights of all human beings, not merely the oppressed or downtrodden. Insofar as legal education deals with rights at all, and obviously it does, it is dealing with human rights. By the same token, the supposed dichotomy between personal rights and property rights seems to me to be a false one. All legal rights, including rights in property, are in the final analysis personal rights and therefore human rights. Nevertheless,

29 *Report of Council on Education in Professional Responsibility and Council on Legal Education for Professional Responsibility,* 1968 ASS'N AM. L. SCHOOLS PROC., pt. 1, § II, at 122-27.

30 *Id.* at 125-26.

there is a sense in which these distinctions are valid. Certainly the need to protect and advance the rights of the downtrodden and the oppressed is a crucial one.

Up to now, I have argued that legal education can become more moral by becoming more relevant and by preparing our students better for practice, by giving them a broader understanding of the role and function of the law, and by giving them a sound conception of their responsibilities as members of a learned profession. But I think more is required if we are to prepare our students adequately for the protection and advancement of human rights.

One of the complaints currently voiced by many students is that the present law school curriculum is too heavily weighted with courses concerned primarily with business matters or with the conservation and transmission of wealth. A glance at the catalogue of my own law school shows that there may be some basis for this complaint, at least in one respect. Disregarding for the moment the first-year curriculum, about which I have already spoken at length, I count in the second and third years six required courses, twenty-eight electives, and twenty-six problem courses. Of the required courses, which necessarily take up most of the second year schedule, all but one (Criminal Law) are business or wealth oriented. However, when we move away from the required courses, the situation improves somewhat. Of the twenty-eight electives, there are nine which could be put in the business or wealth category and six which could be said to deal with personal or human rights. Of the twenty-six problem courses, about nine deal with business or wealth matters and about seven with personal or human rights. (The remaining courses are either of a professional nature, such as Procedure, or philosophical and cultural, such as Jurisprudence and Legal History.) Except for the emphasis in the required second-year courses (which we are considering correcting) this does not seem to be out of proportion.

The names of some of the courses now being offered in the area of human and personal rights convey some idea of what we are attempting to give our students: Law and Poverty, Civil Rights and Civil Disobedience, Consumer Protection, Problems in Criminal Law, Problems of Urban Development, Problems in Law and Psychiatry, and Social and Economic Aspects of Family Law. I am sure that the situation is similar in other schools.

So I do not think it can be fairly said that our law faculties are ignoring human rights. Much imaginative thinking and planning is being devoted to acquainting law students with the problems and the ills of our urban society. What is still lacking, I fear, is a sense of overall perspective, a curriculum which will give the student a better understanding of the role of law in society, of its moral and philosophical bases, of its goals and purposes.

There is another aspect of all this which so far I have not touched on because its impact on legal education is only indirect. It does nevertheless have a very real and vital impact. I refer to faculty research and to the concept of the law school as a law center, dedicated both to education in and improvement of the law. It is not enough, it seems to me, for the faculty member to prepare his case books and texts and to write articles for law reviews. His research, to be meaningful and significant, must consider the broader implications of the

strictly legal topics under investigation, and for this the help of the non-lawyer specialist is essential. Time does not permit further development of this subject, so I shall content myself with a quotation from a recent article by Professor Paul Haskell of Case Western Reserve:

> Can the study of trade regulation be meaningful without the consideration of ultimate economic consequences? Can the study of criminal responsibility be meaningful without the consideration of psychiatric and moral factors? Can the study of zoning or urban renewal be significant without the consideration of the sociological impact? Can the study of slum and landlord responsibility be truly productive without the consideration of the economics of that area of commerce? Can the study of welfare legislation be significant without the consideration of its impact upon the recipient? Does not the study of divorce law call for the examination of the socio-economic and moral factors involved? Does not the law dealing with racial relations call for systematic study of the psychological effects of separation and mixing? There are innumerable examples. But, unfortunately, relationships between law teachers and specialists in other disciplines are spasmodic. The non-lawyer has only occasionally been brought into the curriculum or the research of the law school.
>
> I look forward to the day when the law school ceases to be an independent division in the university structure, but rather is a specialized social science division of the graduate school of arts and sciences. Needless to say, this is not an immediate prospect, but until the law school seriously integrates its instruction and its research with the other relevant disciplines, the law school will remain a cultural backwater, despite its vocational proficiency.[31]

A final thought on the subject of human rights is this: We must devise ways and means of broadening the base of our legal education in terms of the students who are admitted to it. A survey made a few years ago, sponsored by the National Opinion Research Center, demonstrated that most law students come from middle and upper middle class backgrounds (a finding which should have surprised no one).[32] This is not just a matter of lack of financial resources, which could be cured by more generous scholarship and loan programs. Much more is it a matter of channelling: most children from poorer economic backgrounds (and this includes most of our minority groups) are culturally disadvantaged to begin with, come from homes where books and learning are simply not known, and rarely set their sights for college or even a liberal high school education but rather, when they simply do not become dropouts, tend toward vocational schools.

One result is that the number of lawyers drawn from minority groups, especially Negroes, is shockingly small. In an article which I commend to your attention,[33] Professor Leroy D. Clark states that in the whole state of Mississippi there are only eight black lawyers, and in the country as a whole only one per cent of the lawyers are black.[34] The main thrust of Professor Clark's article is that until there are more black lawyers, and an opportunity is given to them to join

31 Haskell, *Some Thoughts About Our Law Schools,* 56 GEO. L.J. 897, 905 (1968).
32 *Cf.* S. WARKOV & J. ZELAN, LAWYERS IN THE MAKING 2-3 (1965).
33 Clark, *The Minority Lawyer: Link to the Ghetto,* 55 A.B.A.J. 61 (1969).
34 *Id.*

or work in close cooperation with large established law firms instead of struggling to eke out an existence as single practitioners in the ghetto, adequate legal services simply cannot be rendered to ghetto residents.[35]

Admittedly, the law schools are now trying to remedy this situation by more active recruiting among minority groups. The solution is not easy, because academic standards must still be maintained, but a solution is desperately needed. One interesting suggestion of Professor Clark's is that a program of postgraduate legal studies, or continuing legal education, with generous provision of scholarship funds, be instituted for the benefit of single practitioners in the ghetto whose prior education has been inadequate.[36]

Last year, the Council on Legal Education Opportunity [CLEO] was established as a joint enterprise of the AALS, the ABA, the National Bar Association, and the Law School Admission Test Council. This has been described as "a major commitment to expand opportunities for minority group members to study and to practice law."[37] Already, CLEO has held four summer institutes, each providing orientation and preparation for the study of law to forty Negro and Spanish-American students. CLEO is now conducting a major evaluation and examination of its first six months' work and a report is to be prepared this Spring.[38]

Certainly the challenge must be met.[39] The right to an education, including a legal education for those who are qualified, is as much a human right as any other. And the other, more basic human rights of the ghetto dwellers and other disadvantaged groups cannot really be satisfied simply on the basis of charity or "legal aid." As a matter of human dignity and respect, there is also need for a solid core of well-trained highly qualified lawyers drawn from and practicing among the disadvantaged groups themselves.

Conclusion

The moral basis of legal education, as it pertains to human rights, involves these elements, as I see it:

(1) A sound, effective, and relevant training in the skills of the practicing lawyer.
(2) A reasonably adequate treatment of selected areas of the substantive law.
(3) A placing of the law in its social and cultural context, with a thorough consideration of its origins, goals and purposes.
(4) An awakening in the student of a sense of professional responsibility.
(5) Practical experience in legal aid and similar programs.
(6) Some intensive work in current problems of law and poverty, urban

35 *Id.* at 62-63.
36 *Id.* at 63.
37 *Report of the Committee on Teaching Law Outside of Law Schools,* 1968 ASS'N AM. L. SCHOOLS PROC., pt. 1, § II, at 101.
38 *Id.* at 102.
39 *See* Gellhorn, *The Law Schools and the Negro,* 1968 DUKE L.J. 1069.

redevelopment, due process for the accused, and other areas of human rights.

(7) An intensive program of recruitment for legal education from among disadvantaged groups, with provision for graduate and continuing legal education for lawyers already practicing within such groups.

Perhaps this is not so much a basis as a program. The moral basis of legal education is, it seems to me, the same as the moral basis of the law itself, namely, the pursuit of the virtue of justice. Justice has been variously defined: "To each man what is due him,"[40] and so on. But I like best Aristotle's definition:

> Now Justice in this sense is in fact perfect Virtue — not justice in the abstract, but as it is exercised between man and man. Hence we often find it regarded as the sovereign virtue, "more wonderful than the Evening or the Morning Star," and we have a proverb which says:
>
> "All virtue is summed up in dealing justly." Justice *is* perfect virtue because it *practices* perfect virtue.[41]

I shall conclude these remarks with the wonderful verses in Deuteronomy on justice:

> Thou shalt appoint judges and magistrates in all thy gates, which the Lord thy God shall give thee, in all thy tribes, that they may judge the people with just judgment,
>
> and not go aside to either part. Thou shalt not accept person nor accept gifts, for gifts blind the eyes of the wise, and change the words of the just.
>
> Thou shalt follow justly after that which is just, that thou mayest live and possess the land, which the Lord thy God shall give thee.[42]

40 *See* INSTITUTES 1.1.3.
41 ARISTOTLE, NICOMACHEAN ETHICS, BOOK V, ch. 1, at 1129b (J. Thomson transl. 1953).
42 *Deuteronomy* 16:18-20 (Douay).